

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: RHODE ISLAND RESOURCE RECOVERY
CORPORATION**

**FILE NO.: WP 14-10
X-Ref RIPDES RI0023442**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 65 Shun Pike in the town of Johnston, Rhode Island (the “Property”). The Property includes a facility that is engaged in the recycling and disposal of solid waste (the “Facility”).
- (2) The Respondent was issued Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RI0023442 (the “Permit”) on 28 September 2007 that became effective on 1 January 2008 (the Permit was modified on 26 October 2009). The Permit authorizes the Respondent to discharge stormwater from treatment pond 11 (“Pond 11”) at the Facility to Cedar Swamp Brook.
- (3) The Permit requires the Respondent to:
 - (a) Meet a monthly average limit for Total Ammonia of 4.9 milligrams per liter (“mg/L”) and a daily maximum limit for Total Ammonia of 10.0 mg/L;
 - (b) Collect samples of the water discharging from Pond 11 at a minimum frequency of once per month from April through June and once per quarter from July through March and analyze the samples for, among other pollutants, Total Ammonia (the “Analyses”); and
 - (c) Report the results of the Analyses to the DEM on discharge monitoring reports (“DMRs”).
- (4) The Respondent submitted DMRs for January 2013 through March 2014 to the DEM.

- (5) The DEM's review of the DMRs revealed the following for Total Ammonia:

Month/Quarter	Monthly Permit Limit (mg/L)	Reported Monthly Value (mg/L)	Daily Permit Limit (mg/L)	Reported Daily Value (mg/L)
January-March 2013	4.9	9.03	10.0	9.03
April 2013	4.9	32.7	10.0	32.7
May 2013	4.9	21.3	10.0	21.3
June 2013	4.9	24.6	10.0	24.6
July-September 2013	4.9	75.6	10.0	75.6
March 2014	4.9	29.47	10.0	33.8

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **Rhode Island's Water Pollution Act, Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM's Water Quality Regulations**
 - (a) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
 - (b) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **DEM's Regulations for the Rhode Island Pollutant Discharge Elimination System, Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 30 days of receipt of this Notice of Violation (“NOV”)**, submit a standard operating procedure (“SOP”) detailing how the Respondent will use the aerators in Pond 11 to maintain compliance with the limits for Total Ammonia in the Permit.
- (2) **Within 30 days of receipt of the NOV**, submit an order of approval application (the “Application”) to the DEM for the aerators in Pond 11. The Application must include design calculations that substantiate the air requirements of the aerators to provide adequate treatment, as-built plans and specifications that are signed and stamped by a professional engineer registered in the State of Rhode Island and check for the application fee of \$300.00. The Application is available at <http://www.dem.ri.gov/programs/benviron/water/permits/wtf/index.htm>.
- (3) **Within 90 days of receipt of the NOV**, submit a report to the DEM that summarizes the findings of an investigation into the cause of the Total Ammonia violations, evaluates the need for any additional treatment (beyond the above-mentioned aerators) to eliminate the violations, and recommends a proposed schedule to install any necessary additional treatment (the “Report”). The Report must also evaluate whether leachate from the landfill is entering Pond 11, the actions that can be taken to prevent the leachate from entering Pond 11 (if the evaluation concludes that leachate from the landfill is entering Pond 11), and a schedule to complete the work.
- (4) The SOP, Application and Report shall be subject to the DEM’s review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the DEM information necessary to correct the deficiencies.
- (5) Upon approval of the SOP and the Application by the DEM, the Respondent shall comply with the approvals at all times.
- (6) Upon approval of the Report by the DEM, the Respondent shall complete all work in accordance with the approved schedule.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, against each named Respondent:

Fifteen Thousand Dollars (\$15,000)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this NOV. Payment shall be in the form of a check made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
Office of Administrative Adjudication
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**

- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:
- Marisa Desautel, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Marisa Desautel at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 extension 7119.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

RHODE ISLAND RESOURCE RECOVERY
CORPORATION
c/o RODIO & URSILLO, LTD., Registered Agent
86 Weybosset Street, Suite 400
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: WP14-10 x-ref RIPDES RI0023442
 Respondent: RHODE ISLAND RESOURCE RECOVERY CORPORATION

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C(1), C(2) and C(3) – Failure to comply with Permit	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	6 violations	\$15,000
SUB-TOTAL					\$15,000

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$15,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with Permit
 VIOLATION NO.: C(1), C(2), and C(3)

TYPE		
X TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>TYPE II</u> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>TYPE III</u> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10(a)(2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to comply with its permit by discharging stormwater from the facility to Cedar Swamp Brook in noncompliance with its permit limits for total ammonia. Compliance with permit limits is a major objective of the DEM's RIPDES Regulations and DEM's Water Quality Regulations and is of major importance to the regulatory program.
- (B) **Environmental conditions:** Cedar Swamp Brook is classified as Class B waters. These waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** The stormwater that comes into contact with the active phase of the landfill is discharged to stormwater pond 11. This stormwater is considered landfill wastewater; as such, under Federal rules the stormwater is subject to technology based limits for, among other things, total ammonia. The DEM determined that water quality based permit limits were not required for total ammonia.
- (E) **Duration of the violation:** 6 months. Stormwater was discharged from the facility in violation of the permit limits for total ammonia for January-March 2013, April 2013, May 2013, June 2013, July 2013-September 2013, and January-March 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent took steps to mitigate the violations. After becoming aware of the problem, the Respondent investigated possible causes for the elevated total ammonia levels. When no cause was identified, the Respondent installed aerators in stormwater pond 11 on or about October 2013, after which the levels of ammonia fell to well below the permit limits by November 2013. The Respondent has not yet identified the cause of the total ammonia violations that occurred in January-March 2014.

(continued)

- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Considered, but not utilized for this calculation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250